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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,443	07/01/2005	Antonio Luiz Duarte Braganca	0315-0158PUS1	7833
2292 7590 09/25/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER MCDONOUGH, JAMES E				
ART UNIT 1793		PAPER NUMBER		
NOTIFICATION DATE 09/25/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/518,443

Applicant(s)

BRAGANCA ET AL.

Examiner

JAMES E. MCDONOUGH

Art Unit

1793

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 8 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 08 September 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2-7, 9, 11-13, 15, 17-23, 25-35 and 37-61.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael A Marcheschi/
Primary Examiner, Art Unit 1793

Continuation of 11, does NOT place the application in condition for allowance because: Applicants argue that Lewis bases are compounds with oxygen, nitrogen groups (water, ester, ether, amines, etc) which have extra electrons to donate and that in their invention no electron donor is used, this is not persuasive because the invention uses silica, which clearly has oxygen atoms with extra electrons to donate. Applicants argue that titanium active centers impregnated over silica will not be directly linked to these oxygenated groups from silica, this is not persuasive because applicants have shown no convincing evidence or reasoning that the titanium can not or will not bind to the oxygen groups on silica. Applicants argue that the addition of the electron donor in the references will change the catalyst, this is not persuasive because applicants admit that it is known how these electron donors change a catalyst so it would appear that the skilled artisan would be able to make the invention with or without the use of these electron donors and understand how it will affect the crystal structure, further it is noted that the claims use comprising language, which does not disallow the use of the electron donor, further it is noted that the crystal structure of the catalyst is not claimed. Applicants argue that since their precipitation is brought about by the addition of the halide source no adducts form, this is not persuasive because applicants have not shown that no adduct will be formed. Applicants argue that the reference WO 91/08239 has titanium in different oxidation states, this is not persuasive because applicants have not shown that all of their titanium is in a single oxidation state with identical steric and electronic neighborhoods. Applicants again argue the crystal structure, however applicants admit that the skilled artisan would know how the electron donor will affect the crystal structure, and it is known that the structure affects the polymer made, it would have been obvious to use or not use the electron donor to study the effect on the polymer made using different structures. Applicants present another table in an attempt to show unexpected results, this is not persuasive because: 1.) the rejections are obvious rejections and applicants have not argued that the reference can not have the same amount of Ti, however all the examples use a higher amount of Ti₂.) the amounts of magnesium are different 3.) the amounts of butene added are different 4.) applicants have not shown that these results would be the same under different conditions 5.) the results are not fully commensurate in scope with the claimed invention, therefore it can not be determined if the results are indeed superior. Applicants point to graphic 1 to argue their invention is novel and unobvious, this is not persuasive because it can not be seen what the superior result in this graph is or how it relates to a superior unexpected product. Applicants argue about their low (less than 10 %) XS, however applicants have not shown that the reference are incapable of achieving this. Applicants argue that the Ti/Mg ratio used to make the catalyst does not result in a catalyst with the same ratio of Ti/Mg, while this may be true, it can be seen from table 2, that the reference can read on the amount of Ti, Mg and their ratio to one another, so it is not seen how this differentiates the invention from the prior art, and appears to contradict many of applicants arguments. Applicants argue that their declarations show that the prior art does not achieve their results, this is not persuasive because the few examples all polymerized the same way (except for the amounts and ratio of ingredients, which disallow for this comparison to be made) and are not fully commensurate with the scope of the claimed invention. Applicants argue that the references do not teach the amount of titanium, magnesium and chlorine, this is not persuasive and applicant's attention is directed table 2 from their submission, which shows the amounts and ratios of the compositions of the references to overlap with that of the instant invention.